

DECISION



17829
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-201936

DATE: April 21, 1981

MATTER OF: James W. Gregory - Barring Act

- DIGEST:
1. Employee's claim for retroactive temporary promotion from April 16, 1973, until March 30, 1975, is time barred prior to February 9, 1975. Although employee filed claim with his agency dated May 20, 1980, the Barring Act, 31 U.S.C. 71a (1976), requires that claim be received in GAO to toll the act. Moreover, certifying officer's later request as to propriety of paying employee does not toll the act since certifying officer did not send claim or signed voucher with his request. Only when employee's claim was received in GAO on February 9, 1981, was the barring act tolled. Employee may be paid on his claim from February 9, 1975, until March 30, 1975.
 2. Certifying officer requesting advance decision from this Office should submit signed voucher with his request since Barring Act, 31 U.S.C. 71a (1976), precludes consideration of claim not received in this Office within six years after the claim first accrued. Only a signed claim of the employee, bearing his address, will toll Barring Act. A properly signed voucher would serve this purpose.

Mr. James L. Ryan, authorized certifying officer with the Department of Interior's National Park Service, requests an advance decision as to what effect 31 U.S.C. 71a (1976) has on the [claim for a retroactive temporary promotion and backpay] of Mr. James W. Gregory, a Park Service employee.

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The record shows that Mr. Gregory filed a claim dated May 20, 1980, with the Park Service for a retro-active temporary promotion and backpay. Mr. Gregory claimed he had been detailed from a GS-11 Administrative Assistant position to a GS-12 Administrative Officer position from April 16, 1973, until March 30, 1975.

The Regional Personnel Officer for the Park Service's Midwest Region investigated Mr. Gregory's claim for backpay and found that (1) Mr. Gregory was designated as "Acting Administrative Officer" by Superintendent Ivan D. Parker on February 23, 1973; (2) the Administrative Officer position was vacant from April 15, 1973, through March 30, 1975; (3) the Administrative Officer position was classified at the GS-12 level and (4) Mr. Gregory performed in the position as he claimed. Accordingly, the Personnel Officer advised that Mr. Gregory was due backpay under our Turner-Caldwell decision, 56 Comp. Gen. 427 (1977) and Federal Personnel Manual (FPM) Supp. 990-2, Book 550, S8-6c(6)(e) June 16, 1977. The Personnel Officer has executed personnel actions to correct Mr. Gregory's pay for the period in question.

Mr. Ryan, however, states that although Mr. Gregory's backpay claim appears proper, the portion prior to May 20, 1974, is more than 6 years from the date Mr. Gregory filed his claim with the Park Service. He therefore asks for our decision on the application of 31 U.S.C. 71a, to Mr. Gregory's claim.

Section 71a of Title 31, United States Code, states in pertinent part:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within 6 years after the date such claim first accrued * * *."

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It is clear from the above statute that all claims cognizable by the General Accounting Office (GAO) must be received by GAO within 6 years after the date the claim first accrued or be barred. Donald B. Sylvain, B-190851, February 15, 1978; William D. Yancey, B-183086, September 7, 1977; Joan J. Shapira, B-188023, July 1, 1977. The date of recording in GAO is the date the claim would be regarded as having been received in this Office for the purposes of tolling the statute of limitations. Randall W. Cleveland, B-178715, May 13, 1975. Filing a claim with the agency does not toll the running of the barring act, even though the delay at the agency level is the fault of the agency, not the employee. Herbert M. Pollock, B-199521, August 19, 1980; James C. Payne, B-191801, October 20, 1978; Freddie L. Baker, B-190841, December 27, 1978. The date the claim first accrued for the purpose of our Turner-Caldwell decision refers to the date on which the work in question was performed. 58 Comp. Gen. 3 (1978). Thus, it is clear that this Office can consider only the portion of Mr. Gregory's claim that occurred within 6 years prior to the date it was recorded in GAO.

The question remains as to when Mr. Gregory's claim was filed at GAO. As noted above, the certifying officer at the Park Service requested an advance decision on Mr. Gregory's case and that request was received at GAO on January 26, 1981.

The certifying officer's request for decision, however, cannot be considered as tolling the barring act since Mr. Gregory's claim with his signature and address was not sent with the request nor did the request for decision transmit a signed voucher. In this regard we have held that:

"* * * the statutory authority under which this Office may render a decision to a certifying officer (section 3 of the act of December 29, 1941, 55 Stat.

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876, 31 U.S. Code 82d) limits us to instances involving a question of law with respect to payment on a specific voucher presented to him for certification prior to payment of the voucher. The voucher must also accompany the submission to this Office. (See 21 Comp. Gen. 1128 (1942); 52 id. 83 (1972).)" 53 Comp. Gen. 429 (1973).

If a voucher signed by Mr. Gregory had been submitted with the certifying officer's request for decision, the receipt of that voucher in this Office would have tolled the barring act.

In any event, subsequent to the receipt of the request for decision in Mr. Gregory's case, Mr. Gregory sent us a letter received here February 9, 1981, in which he stated his claim above his signature and address. It was not until the date we received Mr. Gregory's letter, therefore, that the barring act's strict requirements were met and its application to Mr. Gregory's claim tolled. The provisions of 31 U.S.C. § 71a may not be waived or modified. Sylvain, Baker, supra.

Accordingly, Mr. Gregory may be paid backpay on his claim for a retroactive temporary promotion only from February 9, 1975, until March 30, 1975. The remaining portion of his claim is time barred.

MILTON J. SOCOLAR

Acting Comptroller General
of the United States